

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

November 20, 2003

IN RE:

**IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S
TRIENNIAL REVIEW ORDER – 9
MONTH PROCEEDING – SWITCHING**

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**DOCKET NO.
03-00491**

**ORDER GRANTING IN PART JOINT MOTION TO
AMEND PROCEDURAL SCHEDULE**

This docket came before the Hearing Officer for consideration of the *Joint Motion to Amend Procedural Schedule* filed by BellSouth Telecommunications, Inc. ("BellSouth") and the Competitive Carriers of the South ("CompSouth")¹ on November 17, 2003.

In the motion, CompSouth and BellSouth jointly request that the procedural schedule be amended to allow the parties to file the first round of motions to compel after responses to discovery are received. CompSouth and BellSouth propose the following modifications to the procedural schedule contained in the November 12, 2003 *Order Granting Joint Motion for One Week Extension to File Motion to Compel*: (1) motions to compel should be filed on December 2, 2003 rather than November 20, 2003; (2) responses to motion to compel should be filed on December 9, 2003 rather than December 2, 2003; (3) the order on the motions to compel should be issued on December 16, 2003

¹ CompSouth includes the following telecommunications providers: Access Integrated Networks, Inc.; Access Point, Inc.; MCI; Birch Telecom; Covad Communications Company; Cinergy Communications Company; AT&T; NewSouth Communications, Corp.; Talk America; Nuvox Communications, Inc.; ITC^DeltaCom; Xspedius Communications; Momentum Business Solutions; Cinergy Communications Company; Network Telephone Corp.; KMC Telecom; Z-Tel Communications, Inc.; and IDS Telecom LLC.

rather than December 10, 2003; and (4) second motions to compel and the statements from ILECs on geographic areas should be filed on January 7, 2004 rather than December 15, 2003. According to the motion, all remaining dates will remain unchanged. In support of their motion, movants assert that filing the motions after discovery responses are received will be more efficient as parties and nonparties² may provide responses despite their objections. Movants also speculate that the filing of motions to compel after the receipt of discovery request responses will reduce the administrative burden on the Hearing Officer.

Movants do not state whether they have contacted any of the other parties to this docket to determine whether there are objections to the motion despite the following statements of the Hearing Officer in the November 12, 2003 *Order Granting Joint Motion for One Week Extension to File Motion to Compel*:

It should be noted, however, that all parties were not notified of this motion in advance of its filing. Specifically, the motion does not mention Time Warner Telecom of the Mid-South, LLC, Electric Power Board of Chattanooga, Citizens Telecommunications Company of Tennessee, LLC, TDS Telecom or Qwest Communications, Inc. While it does not appear that movants' request will prejudice any party, those parties that did not receive notification of the motion prior to its filing and which were essentially precluded from filing written objections as a result of the filing date of the motion should not be prevented from asserting prejudice or other objections at a later date if they so choose. **Movants should attempt in the future to contact all parties to ascertain whether there are objections when filing a motion on a date that does not permit a reasonable opportunity for the filing of written responses to the motion.**³

² The following entities have not sought to intervene in this docket, but have been served with discovery requests and filed objections: Access Integrated Networks, Inc.; MCI WorldCom Communications, Inc.; Business Telecom, Inc.; Talk America; Nuvox Communications, Inc.; Xspedius Communications; Momentum Business Solutions; Cinergy Communications Company; Network Telephone Corp.; KMC Telecom; Z-Tel Communications, Inc.; and IDS Telecom LLC. These entities will be referred to as nonparties for the purposes of this order and will receive a copy of this order in addition to all parties of record.

³ *Order Granting Joint Motion for One Week Extension to File Motion to Compel*, 2 (Nov. 19, 2003). In the instant case, movants not only fail to mention the parties listed in the above quote, but also fail to mention United Telephone Southeast, Inc. and the Consumer Advocate and Protection Division of the Office of the Attorney General.

The filing of the instant motion and the service thereof by U.S. mail on the day before filings that are the subject of the motion are due does not permit a reasonable opportunity for the filing of written responses to the motion.

Movants' statement that all remaining dates will remain unchanged is difficult to understand. To explain, movants request that the second motions to compel be filed on January 7, 2004, yet movants fail to mention the dates for filing responses to the second motions to compel or the second supplemental discovery requests that are currently scheduled for December 19, 2003 and January 9, 2004, respectively. Clearly, these dates will need to be adjusted as well if the motion is granted.

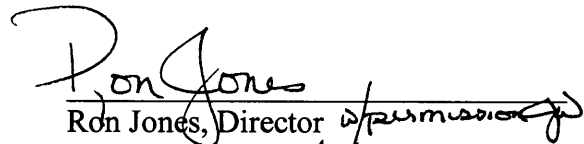
Despite the apparent failure of movants to follow the explicit direction of the Hearing Officer and the lack of clarity with regard to the filing dates related to the second motions to compel, the Hearing Officer finds that every effort should be made to effectuate discovery between the parties and nonparties without intervention by the Hearing Officer. Therefore, the Hearing Officer concludes that the motion should be granted such that the date for filing motions to compel is extended to Tuesday, December 2, 2003. A status conference will be held on Monday, December 1, 2003 at 1:00 p.m. for the purpose of discussing the remaining dates in the procedural schedule. Any motion to change the date of the status conference should be made in writing, served on all parties of record, and filed with the Tennessee Regulatory Authority by Tuesday, November 25, 2003 at noon.

IT IS THEREFORE ORDERED:

- 1) The *Joint Motion to Amend Procedural Schedule* is granted in part.

2) The date for filing motions to compel contained in the November 12, 2003 *Order Granting Joint Motion for One Week Extension to File Motion to Compel* is extended to **Tuesday, December 2, 2003**.

3) A status conference in this docket will be held on **Monday, December 1, 2003 at 1:00 p.m.** for the purpose of discussing the remaining dates in the procedural schedule. Any motion to change the date of the status conference should be made in writing, served on all parties of record, and filed with the Tennessee Regulatory Authority by **Tuesday, November 25, 2003 at noon**.


Ron Jones, Director *a/p. [unclear]*
As Hearing Officer⁴

⁴ During the September 22, 2003 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of Chairman Deborah Taylor Tate and Directors Pat Miller and Ron Jones unanimously voted to appoint Director Ron Jones as the Hearing Officer to prepare the switching portion of this case for a hearing by the panel. Transcript of Proceedings, Sept. 22, 2003, pp. 73-75 (Authority Conference).